

110TH CONGRESS
1ST SESSION

H. R. 4458

To amend chapter 6 of title 5, United States Code (commonly known as the Regulatory Flexibility Act), to ensure complete analysis of potential impacts on small entities of rules, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 12, 2007

Mr. ELLSWORTH (for himself, Ms. VELÁZQUEZ, Ms. CLARKE, Mr. CUELLAR, Mr. HIGGINS, Ms. HIRONO, Mr. JOHNSON of Georgia, Ms. MOORE of Wisconsin, Mr. SESTAK, and Mr. SHULER) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Small Business, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend chapter 6 of title 5, United States Code (commonly known as the Regulatory Flexibility Act), to ensure complete analysis of potential impacts on small entities of rules, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Small Business Regu-
5 latory Improvement Act”.

1 **SEC. 2. FINDINGS.**

2 Congress finds the following:

3 (1) Small businesses are frequently the source
4 of new products, methods, and innovations.

5 (2) A vibrant and growing small business sector
6 is critical to creating jobs in a dynamic economy.

7 (3) Regulations designed for application to
8 large-scale entities have been applied uniformly to
9 small businesses and other small entities.

10 (4) Uniform Federal regulatory and reporting
11 requirements in many instances have imposed on
12 small businesses and other small entities dispro-
13 portionately burdensome demands, including legal, ac-
14 counting, and consulting costs.

15 (5) Since 1980, Federal agencies have been re-
16 quired to recognize and take account of the dif-
17 ferences in the scale and resources of regulated enti-
18 ties but have failed to do so.

19 (6) Alternative regulatory approaches that do
20 not conflict with the stated objectives of the statutes
21 the regulations seek to implement may be available
22 and may minimize the significant economic impact
23 of regulations on small businesses and other small
24 entities.

25 (7) Federal agencies have failed to analyze and
26 uncover less costly alternative regulatory approaches,

1 despite the fact that the chapter 6 of title 5, United
2 States Code (commonly known as the Regulatory
3 Flexibility Act), requires them to do so.

4 (8) Federal agencies continue to interpret chap-
5 ter 6 of title 5, United States Code, in a manner
6 that permits them to avoid their analytical respon-
7 sibilities.

8 (9) Significant changes are needed in the meth-
9 ods by which Federal agencies develop and analyze
10 regulations, receive input from affected entities, and
11 develop regulatory alternatives that will lessen the
12 burden or maximize the benefits of final rules to
13 small businesses and other small entities.

14 (10) It is the intention of the Congress to
15 amend chapter 6 of title 5, United States Code, to
16 ensure that all impacts, including foreseeable indi-
17 rect effects, of proposed and final rules are consid-
18 ered by agencies during the rulemaking process and
19 that the agencies assess a full range of alternatives
20 that will limit adverse economic consequences or en-
21 hance economic benefits.

22 (11) Federal agencies should be capable of as-
23 sessing the impact of proposed and final rules with-
24 out delaying the regulatory process or impinging on

1 the ability of Federal agencies to fulfill their statu-
2 tory mandates.

3 **SEC. 3. CLARIFICATION AND EXPANSION OF RULES COV-**
4 **ERED BY THE REGULATORY FLEXIBILITY**
5 **ACT.**

6 Section 601 of title 5, United States Code, is amend-
7 ed by adding at the end the following new paragraph:

8 “(9) ECONOMIC IMPACT.—The term ‘economic
9 impact’ means, with respect to a proposed or final
10 rule—

11 “(A) any direct economic effect on small
12 entities of such rule; and

13 “(B) any indirect economic effect on small
14 entities which is reasonably foreseeable and re-
15 sults from such rule (without regard to whether
16 small entities will be directly regulated by the
17 rule).”.

18 **SEC. 4. REQUIREMENTS PROVIDING FOR MORE DETAILED**
19 **ANALYSES.**

20 (a) INITIAL REGULATORY FLEXIBILITY ANALYSIS.—
21 Subsection (b) of section 603 of title 5, United States
22 Code, is amended to read as follows:

23 “(b) Each initial regulatory flexibility analysis re-
24 quired under this section shall contain a detailed state-
25 ment describing—

1 “(1) the reasons why the action by the agency
2 is being considered;

3 “(2) the objectives of, and legal basis for, the
4 proposed rule;

5 “(3) the type of small entities to which the pro-
6 posed rule will apply;

7 “(4) the number of small entities to which the
8 proposed rule will apply or why such estimate is not
9 available;

10 “(5) the projected reporting, recordkeeping, and
11 other compliance requirements of the proposed rule,
12 including an estimate of the classes of small entities
13 which will be subject to the requirement, the costs,
14 and the type of professional skills necessary to com-
15 ply with the rule; and

16 “(6) all relevant Federal rules which may dupli-
17 cate, overlap, or conflict with the proposed rule, or
18 the reasons why such a description could not be pro-
19 vided.”.

20 (b) FINAL REGULATORY FLEXIBILITY ANALYSIS.—

21 (1) Paragraph (1) of section 604(a) of title 5,
22 United States Code, is amended by striking “suc-
23 cinct”.

1 (2) Paragraph (3) of such section is amended
2 by striking “an explanation” and inserting “a de-
3 tailed explanation”.

4 (3) Paragraph (4) of such section is amended
5 to read as follows:

6 “(4) a description of the projected reporting,
7 recordkeeping, and other compliance requirements of
8 the rule, including an estimate of the classes of
9 small entities which will be subject to the require-
10 ment, the costs, and the type of professional skills
11 necessary to comply with the rule; and”.

12 (c) CERTIFICATION OF NO IMPACT.—Subsection (b)
13 of section 605 of title 5, United States Code, is amended
14 by inserting “detailed” before “statement” both places
15 such term appears.

16 **SEC. 5. PERIODIC REVIEW OF RULES.**

17 Section 610 of title 5, United States Code, is amend-
18 ed to read as follows:

19 **“§ 610. Periodic review of rules**

20 “(a) Not later than 180 days after the enactment of
21 the Small Business Regulatory Improvement Act, each
22 agency shall publish in the Federal Register and place on
23 its website a plan for the periodic review of rules issued
24 by the agency which the head of the agency determines
25 have a significant economic impact on a substantial num-

1 ber of small entities. Such determination shall be made
2 without regard to whether the agency performed an anal-
3 ysis under section 604. The purpose of the review shall
4 be to determine whether such rules should be continued
5 without change, or should be amended or rescinded, con-
6 sistent with the stated objectives of applicable statutes, to
7 minimize significant economic impacts on a substantial
8 number of small entities. Such plan may be amended by
9 the agency at any time by publishing the revision in the
10 Federal Register and subsequently placing the amended
11 plan on the agency's website.

12 “(b) The plan shall provide for the review of all such
13 agency rules existing on the date of the enactment of the
14 Small Business Regulatory Improvement Act within 10
15 years of the date of publication of the plan in the Federal
16 Register and for review of rules adopted after the date
17 of enactment of the Small Business Regulatory Improve-
18 ment Act within 10 years after the publication of the final
19 rule in the Federal Register. If the head of the agency
20 determines that completion of the review of existing rules
21 is not feasible by the established date, the head of the
22 agency shall so certify in a statement published in the
23 Federal Register and may extend the review for not longer
24 than 2 years after publication of notice of extension in
25 the Federal Register. Such certification and notice shall

1 be sent to the Chief Counsel for Advocacy and the Con-
2 gress.

3 “(c) Each agency shall annually submit a report re-
4 garding the results of its review pursuant to such plan
5 to the Congress and, in the case of agencies other than
6 independent regulatory agencies (as defined in section
7 3502(5) of title 44, United States Code) to the Adminis-
8 trator of the Office of Information and Regulatory Affairs
9 of the Office of Management and Budget. Such report
10 shall include the identification of any rule with respect to
11 which the head of the agency made a determination de-
12 scribed in paragraph (5) or (6) of subsection (d) and a
13 detailed explanation of the reasons for such determination.

14 “(d) In reviewing rules under such plan, the agency
15 shall consider the following factors:

16 “(1) The continued need for the rule.

17 “(2) The nature of complaints received by the
18 agency from small entities concerning the rule.

19 “(3) Comments by the Regulatory Enforcement
20 Ombudsman and the Chief Counsel for Advocacy.

21 “(4) The complexity of the rule.

22 “(5) The extent to which the rule overlaps, du-
23 plicates, or conflicts with other Federal rules and,
24 unless the head of the agency determines it to be in-
25 feasible, State and local rules.

1 “(6) The length of time since the rule has been
2 evaluated or the degree to which technology, eco-
3 nomic conditions, or other factors have changed in
4 the area affected by the rule.

5 “(e) The agency shall publish in the Federal Register
6 and on its website a list of rules to be reviewed pursuant
7 to such plan. Such publication shall include a brief de-
8 scription of the rule, the reason why the agency deter-
9 mined that it has a significant economic impact on a sub-
10 stantial number of small entities (without regard to wheth-
11 er it had prepared a final regulatory flexibility analysis
12 for the rule), and request comments from the public, the
13 Chief Counsel for Advocacy, and the Regulatory Enforce-
14 ment Ombudsman concerning the enforcement of the
15 rule.”.

16 **SEC. 6. CHANGES TO THE REGULATORY FLEXIBILITY ACT**
17 **TO COMPORT WITH EXECUTIVE ORDER 13272.**

18 (a) INITIAL REGULATORY FLEXIBILITY ANALYSIS.—
19 Section 603 of title 5, United States Code, is amended
20 by adding at the end the following:

21 “(d) An agency shall notify the Chief Counsel for Ad-
22 vocacy of the Small Business Administration of any draft
23 rules that may have a significant economic impact on a
24 substantial number of small entities either—

1 “(1) when the agency submits a draft rule to
2 the Office of Information and Regulatory Affairs at
3 the Office of Management and Budget, if submission
4 is required; or

5 “(2) if no submission to the Office of Informa-
6 tion and Regulatory Affairs is so required, at a rea-
7 sonable time prior to publication of the rule by the
8 agency.”.

9 (b) FINAL REGULATORY FLEXIBILITY ANALYSIS.—

10 (1) INCLUSION OF RESPONSE TO COMMENTS ON
11 CERTIFICATION OF PROPOSED RULE.—Paragraph
12 (2) of section 604(a) of title 5, United States Code,
13 is amended by inserting after “initial regulatory
14 flexibility analysis” the following: “(or certification
15 of the proposed rule under section 605(b))”.

16 (2) INCLUSION OF RESPONSE TO COMMENTS
17 FILED BY CHIEF COUNSEL FOR ADVOCACY.—Sub-
18 section (a) of section 604 of title 5, United States
19 Code, is amended by redesignating paragraphs (3)
20 through (5) as (4) through (6), respectively, and by
21 inserting after paragraph (2) the following:

22 “(3) the agency’s response to any comments
23 filed by the Chief Counsel for Advocacy of the Small
24 Business Administration in response to the proposed
25 rule, and a detailed statement of any changes made

- 1 to the proposed rule in the final rule as a result of
- 2 such comments;”.

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